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Supreme Court, U.S.
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No. 93-671

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JOSEPH J. SANTOPIETRO
and PERRY A. PISCIOTTI,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONERS' REPLY MEMORANDUM

JUDD BURSTEIN, P.C.
Attorneys for Petitioners
950 Third Avenue
New York, New York 10022
(212) 826-1200

Of Counsel:
JUDD BURSTEIN, ESQ.*
MARC FERNICH, ESQ.

* *Counsel of Record*

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Petitioners Joseph J. Santopietro and Perry A. Pisciotti respectfully submit this memorandum in reply to the government's opposition brief. In this reply, we briefly address the issue of whether Pisciotti's Sixth Amendment rights were violated because his trial lawyer had a conflict of interest. The remaining issues have been fully joined.

In recasting it as an ineffective assistance claim, the government fundamentally misperceives the nature of our argument. As our petition made clear, we contend that Pisciotti's counsel was laboring under an actual conflict of interest, not merely that he was ineffective.[1] As such, automatic reversal was required under *United States v. Cancilla*, 725 F.2d 867 (2d Cir. 1984), and its progeny. This being so, we need not show any "specific prejudice" or "investigation of the attorney by the government." *See* Government's Opposition Brief at 15.

Even if ours *was* an ineffective assistance claim, the government is simply wrong when it asserts that the argument is "not ripe for review" on direct appeal. *Id.* On pain of waiver, ineffective assistance claims must be raised on direct appeal where (i) a new lawyer handles the appeal; and (ii) the

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[1] Parenthetically, however, we note that the record amply supports such an inference. *See* Petitioners' Brief on Appeal at 18-19 (describing counsel's "shockingly incompetent effort" to introduce into evidence grand jury testimony helpful to the prosecution).

claim is based exclusively on the trial record. *Douglas v. United States*, No. 93-2028, *slip op.* (2d Cir. December 22, 1993) (*citing Billy-Eko v. United States*, 1993 WL 429785 (2d Cir. October 25, 1993) (collecting cases). Both of these criteria are satisfied here.

Respectfully submitted,

JUDD BURSTEIN, P.C.
Attorneys for Petitioners
950 Third Avenue
New York, New York 10022
(212) 826-1200

Of Counsel
Judd Burstein, Esq.
Marc Fernich, Esq.